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OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$110.00 (SB2 Atkins: \$0.00)

PAGES: 33

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
URBAN DIVISION  
MAIL STATION 501

**WHEN RECORDED MAIL TO**  
PROJECT MANAGEMENT  
PERMIT CLERK  
MAIL STATION 501

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INTERNAL ORDER NUMBER: 24008439 SPACE ABOVE THIS LINE FOR RECORDER'S USE

SITE DEVELOPMENT PERMIT 2358005  
NEIGHBORHOOD DEVELOPMENT PERMIT 2471788  
CONDITIONAL USE PERMIT 2358007  
**9G - PROJECT NO. 649856**  
PLANNING COMMISSION

This Site Development Permit/Neighborhood Development Permit/Conditional Use Permit is granted by the Planning Commission of the City of San Diego ("City") to 4 Lee Tenth, LLC, Owner, and Cisterra Partners, LLC, Permittee, pursuant to San Diego Municipal Code (SDMC) Section 126.0505, 126.0404, 125.0440, and 126.0305, to allow 1) the substantial alteration of a historical resource, 2) five deviations from the development regulations of the SDMC, and 3) off-site alcoholic beverage sales for 9G ("Project"). The approximately 25,000 square-foot (SF) site is located at 659 Ninth Avenue (south side of G street between Ninth and Tenth avenues) in the East Village neighborhood of the Downtown Community Plan (DCP) area and within the Centre City Planned District. The project site is legally described as Lots A, B, C, K, and L in Block 83 of Horton's Addition in the City of San Diego, County of San Diego, State of California, according to map thereof on file in the Office of the County Recorder of San Diego County.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner and Permittee to construct and operate a development and uses as described and identified by size, dimension, quantity, type, and location on the approved exhibits (Exhibit "A") dated June 9, 2020, on file in the Development Services Department (DSD).

The Project shall include:

- a. Construction of a 22-story, 253-foot tall mixed-use development, totaling approximately 432,175 SF and comprised of 241 dwelling units, approximately 35,668 SF of commercial space, and five levels of above-grade parking containing 243 parking spaces.
- b. **Site Development Permit (SDP):** Substantial alterations to designated Historical Resources Board (HRB) Site No. 1355, the Pacific Telephone and Telegraph Company Garage, including demolition of the interior and the 1946 addition and maintenance of the original 1932 structure with some modifications to accommodate vehicle driveways and the commercial storefront.

**ORIGINAL**

c. **Neighborhood Development Permit (NDP):** Five deviations from the SDMC as followings:

1. Sec. 131.0454 – Personal Storage: Reduce the number of required personal storage areas from 100% of DU (241 DU) to 38% of DU (91 DU).
2. Sec. 142.0560(j) – Driveway & Access Regulations: Reduce the minimum width required for the one-way driveway on Ninth Avenue width from 14 feet to 12 feet.
3. Sec. 156.0310(d)(3)(A) – Tower Lot Coverage: Increase the allowable maximum tower lot coverage from 50% to 66%.
4. Sec. 156.0310(d)(3)(B) – Tower Floor Plate: Increase the allowable maximum east-west tower floor plate dimension from 130 feet to 150 feet.
5. Sec. 156.0311(d)(1) – Transparency: Reduce the minimum required ground level transparency of the Tenth avenue building façade from 60% to 40%.

d. **Conditional Use Permit (CUP):** Off-site alcoholic beverage sales in the ground floor and basement level commercial spaces.

e. Public and private accessory improvements determined by DSD to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36-month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by September 24, 2023.

2. The utilization of this CUP is contingent upon the approval of a license to sell alcohol at this location by the California Department of Alcoholic Beverage Control (ABC). The issuance of this CUP does not guarantee that the ABC will grant an alcoholic beverage license for this location.

3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the Permit to DSD; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.
11. If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.
12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee



shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

13. Development Impact Fees: The development will be subject to Centre City Development Impact Fees. The fee shall be determined in accordance with the fee schedule in effect at the time of building permit issuance and with the SDMC. The Owner/Permittee shall provide to the City's Facilities Financing Department the following information at the time of application for building permit plan check: 1) total square footage for commercial lease spaces and all areas within the building dedicated to support those commercial spaces including, but not limited to: loading areas, service areas and corridors, utility rooms, and commercial parking areas; and 2) applicable floor plans showing those areas outlined for verification. In addition, it shall be responsibility of the Owner/Permittee to provide all necessary documentation for receiving any "credit" for existing buildings to be removed.

14. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

15. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

16. Issuance of this Permit by City does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies, including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. §1531 et seq.).

17. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

18. This development shall comply with the standards, policies, and requirements in effect at the time of approval of this development, including any successor(s) or new policies, financing mechanisms, phasing schedules, plans and ordinances adopted by the City.

19. No permit for construction, operation, or occupancy of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until this Permit is recorded in the Office of the San Diego County Recorder.

20. Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.



21. Construction plans shall be in substantial conformity to the approved Basic Concept/Schematic Drawings on file at the City. Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s)/amendment(s) to the Project have been granted.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

22. As required by SDMC Sec. 156.03049(h), the development shall comply with all applicable MMRP measures from the 2006 Downtown Final Environmental Impact Report (Downtown FEIR) for the DCP to the satisfaction of DSD and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

AQ-B.1-1; HIST-A.1-1; HIST-A.1-2; HIST-B.1-1; PAL-A.1-1; NOI-B.1-1; NOI-C.1-1; TRF-A.1.1-2

**CLIMATE ACTION PLAN REQUIREMENTS:**

23. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of DSD, including:

- a. Cool/Green Roofs: Roofing materials with a minimum three-year aged solar reflection and thermal emittance or solar reflection index equal to or greater than the values specified in the voluntary measures under California Green Building Standards Code (CAL Green).
- b. Plumbing Fixtures & Fittings:
  - i. Residential:
    - 1. Kitchen faucets: Maximum flow rate not to exceed 1.5 gallons per minute at 60 PSI;
    - 2. Standard dishwashers: 4.25 gallons per cycle;
    - 3. Compact dishwashers: 3.5 gallons per cycle;
    - 4. Clothes washers: Water factor of six gallons per cubic feet of drum capacity.
  - ii. Nonresidential:
    - 1. Plumbing fixtures and fittings that do not exceed the maximum flow rate specified in Table A5.303.2.3.1 (voluntary measures) of CAL Green.
    - 2. Appliances and fixtures for commercial applications that meet the provisions of Section A5.303.3 (voluntary measures) of CAL Green.
- c. Electric Vehicle Charging: Of the total required listed cabinets, boxes, or enclosures, 50% have the necessary electric vehicle supply equipment installed to provide active electric vehicle charging stations ready for use.
- d. Bicycle Parking Spaces: Project provides more short- and long-term bicycle parking spaces than required in the SDMC.

- e. Shower Facilities: The Project includes changing/shower facilities in accordance with the voluntary measures under CAL Green for the nonresidential component.
- f. Designated Parking Spaces: The Project provides designated parking for a combination of low-emitting, fuel-efficient, and carpool/vanpool vehicles.

**AFFORDABLE HOUSING REQUIREMENTS:**

24. Prior to issuance of any residential building permit associated with this Project, the Owner/Permittee shall comply with the provisions of the Inclusionary Affordable Housing Regulations of SDMC, Chapter 14, Article 2, Division 13 and the Inclusionary Housing Procedures Manual. The Owner/Permittee shall either pay the Inclusionary In-Lieu Fee or provide affordable housing units at an offsite location in accordance with the Inclusionary Affordable Housing Regulations. If affordable units are provided at an offsite location, the Owner/Permittee shall enter into a written Agreement with the San Diego Housing Commission which shall be drafted and approved by the San Diego Housing Commission, executed by the Owner/Permittee, and secured by a deed of trust which incorporates applicable affordability conditions consistent with the SDMC.

**AIRPORT REQUIREMENTS:**

25. The Owner/Permittee shall comply with conditions established by the City Airport Approach Overlay Zone (and any successor or amendment thereto) which were approved at the Airport Land Use Commission (ALUC) meeting on March 5, 2020. The ALUC Board made the determination that the project is conditionally consistent with the San Diego International Airport Land Use Compatibility Plan (ALUCP). The Applicant shall comply with the following ALUC conditions:

- a. The structure and construction crane shall be marked and lighted in accordance with Federal Aviation Administration (FAA) procedures.
- b. An aviation easement for the building height shall be recorded with the County Recorder prior to building permit issuance.
- c. The ALUCP requires that a means of overflight notification be provided for new residential land uses. In instances when an aviation easement is required, the overflight notification requirement is satisfied.

**ENGINEERING REQUIREMENTS:**

26. This Permit shall comply with all Conditions of the Final Map for the Tentative Map No. 2365584.

27. The Tentative Map shall comply with the conditions of Permit No. 2358005.

**GEOLOGY REQUIREMENTS:**

28. The Owner/Permittee shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter shall be reviewed for adequacy by the Geology Section of DSD prior to issuance of any construction permits.

29. The Owner/Permittee shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report shall be reviewed for adequacy by the Geology section of DSD prior to exoneration of the bond and grading permit close-out.

**HISTORICAL RESOURCES REQUIREMENTS:**

30. Prior to the issuance of any construction permits, the Owner/Permittee shall submit drawings that incorporate the Treatment Plan as approved by HRB and City Historical Resources Staff on July 23, 2020.

31. Prior to issuance of any construction permits, the Historic American Building Survey (HABS) documentation as approved by HRB and City Historical Resources Staff on July 23, 2020 shall be submitted for archival storage with the City of San Diego HRB, South Coastal Information Center, the California Room of the City of San Diego Public Library, the San Diego Historical Society, and/or other historical society or group(s).

32. During construction of the Project, the Owner/Permittee shall implement the Monitoring Plan as approved by HRB and City Historical Resources staff on July 23, 2020. The Project's Principal Investigator shall send monitoring reports as described in the Monitoring Plan to the City's Mitigation Monitoring staff and Historical Resources staff. The Principal Investigator may submit a detailed letter to City staff prior to the start of work or during construction requesting a modification to the Monitoring Plan. This request shall be based on relevant information and site conditions.

**LANDSCAPE REQUIREMENTS:**

33. Prior to issuance of any grading permit, the Owner/Permittee shall submit complete construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the City Landscape Standards, Storm Water Design Manual, and to the satisfaction of DSD. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A," on file in DSD.

34. Prior to issuance of any public improvement permit, the Owner/Permittee shall submit complete landscape construction documents for ROW improvements to DSD for approval. Improvement plans shall show, label, and dimension a 40-square-foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.



35. Prior to issuance of any building permit (including shell), the Owner/Permittee shall submit complete landscape and irrigation construction documents, which are consistent with the Landscape Standards, to DSD for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in DSD. Construction plans shall provide a 40-square-foot area around each tree that is unencumbered by hardscape and utilities unless otherwise approved per §142.0403(b)5.

36. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the ROW, unless long-term maintenance of said landscaping will be the responsibility of another entity approved by DSD. All required landscape shall be maintained consistent with the Landscape Standards in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted.

37. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed, the Owner/Permittee shall repair and/or replace in kind and equivalent size per the approved documents to the satisfaction of DSD within 30 days of damage or Certificate of Occupancy.

**PLANNING/DESIGN REQUIREMENTS:**

38. Floor Area Ratio (FAR): The Project achieves a FAR of 11.14 through the following FAR bonuses to increase the Project FAR above the Base Maximum of 6.0 pursuant to SDMC: 1) three-bedroom units, 2) LEED silver certification, 3) FAR Payment Program.

39. Parking: 36 parking spaces shall be provided in the Project for the commercial space. No on-site parking is required for the residential DUs and the Project shall not provide more than 241 parking spaces for the residential DUs (one space per DU, excluding tandem spaces). The Project proposes 243 total parking spaces. The parking spaces shall be designed to City standards, except as permitted in SDMC Sec. 156.0313(k), and subject to the following provisions:

- a. The residential off-street parking spaces shall consist only of unbundled parking.
- b. The number of accessible off-street parking spaces shall be provided in accordance with Title 24 of the California Code of Regulations (California Building Standards Code).
- c. The number of off-street electric vehicle charging spaces shall be provided in accordance with the California Green Building Standards Code.
- d. One motorcycle parking space shall be provided for every 20 required vehicle spaces for the commercial space and for every ten parking spaces provided for the residential DU, or 23 spaces with the 243 parking spaces as proposed.

40. Bicycle Parking: Secured bicycle storage shall be provided to accommodate a minimum of 49 bicycles (one bicycle for every five DU and for every 20 required vehicle spaces for the commercial space). Bicycle storage areas shall be within a secured enclosure with access restricted to authorized

persons and provide devices for the locking of individual bicycles. An additional two short-term and two long-term bicycle spaces shall be provided for the commercial component of the Project.

41. Urban Design Standards: The Project, including its architectural design concepts and off-site improvements, shall be consistent with the Centre City Planned District Ordinance (CCPDO) and Centre City Streetscape Manual (CCSM). These standards, together with the following specific conditions, will be used as a basis for evaluating the development through all stages of the development process.

42. Architectural Standards: The architecture of the development shall establish a high quality of design and complement the design and character of the East Village neighborhood as shown in the approved Basic Concept/Schematic Drawings on file with the City. The development shall utilize a coordinated color scheme consistent with the approved Basic Concept Drawings.

43. Form and Scale: The development shall consist of a 22-story mixed-use development (approximately 253 feet tall) measured to the top of the roofline, with roof equipment enclosures, elevator penthouses, and mechanical screening above this height permitted per the CCPDO and the FAA. All building elements shall be complementary in form, scale, and architectural style.

44. Building Materials: All building materials shall be of a high quality as shown in the Basic Concept/Schematic Drawings and approved materials board. All materials and installation shall exhibit high-quality design, detailing, and construction execution to create a durable and high-quality finish. The base of the buildings shall be clad in upgraded materials and carry down to within one inch of finish sidewalk grade, as illustrated in the approved Basic Concept/Schematic Drawings. Any graffiti coatings shall be extended the full height of the upgraded base materials or up to a natural design break such a cornice line. All downspouts, exhaust caps, and other additive elements shall be superior grade for urban locations, carefully composed to reinforce the architectural design. Reflectivity of the glass shall be the minimum reflectivity required by Title 24 of the California Code of Regulations (Title 24). All construction details shall be of the highest standard, as shown in the approved Basic Concept/Schematic Drawings on file with the City, and executed to minimize weathering, eliminate staining, and not cause deterioration of materials on adjacent properties or the ROW. No materials/colors substitutions shall be permitted without prior written City consent.

45. Street Level Design: Street level windows shall be clear glass and may be lightly tinted. Architectural features such as awnings and other design features which add human scale to the streetscape are encouraged where they are consistent with the design theme of the structure. Exit corridors including garage entrances shall provide a finished appearance to the street with street level exterior finishes wrapping into the openings a minimum of ten feet, or the garage door, whichever is deeper. All exhaust caps, lighting, sprinkler heads, and other elements on the undersides of all balconies and surfaces shall be logically composed and placed to minimize their visibility, while meeting code requirements. All soffit materials shall be high quality and consistent with adjacent elevation materials and incorporate drip edges and other details to minimize staining and ensure long-term durability.

46. Utilitarian Areas: Areas housing trash, storage, or other utility services shall be completely concealed from view of the ROW and adjoining developments, except for utilities required to be



exposed by the City or utility company. The development shall provide trash and recyclable material storage areas per SDMC Sections 142.0810 and 142.0820. Such areas shall be provided within an enclosed building area and kept clean and orderly at all times.

47. Mail and Delivery Locations: It is the Owner/Permittee's responsibility to coordinate mail service and mailbox locations with the United States Postal Service and to minimize curb spaces devoted to postal and loading use. The Owner/Permittee shall locate all mailboxes and parcel lockers outside of the ROW either within the building or recessed into a building wall.

48. Circulation and Parking: Owner/Permittee shall prepare a plan which identifies the location of curbside parking control zones, parking meters, fire hydrants, valet services if any, trees, street lights to the satisfaction of the City, and consistent with the performance standards in the CCPDO and CCSM. Such plan shall be submitted in conjunction with Construction Permits. All parking shall meet the requirements of the Building Department, Fire Department and City Engineer. All parking shall be mechanically ventilated. The exhaust system for mechanically ventilated structures shall be located to mitigate noise and exhaust impacts on the public ROW. The garage doors shall be a minimum 80% opaque to prevent views into the garage areas.

49. Open Space and Development Amenities: A landscape plan that illustrates the relationship of the proposed on and off-site improvements and the location of water, and electrical hookups to the satisfaction of the City and consistent with the performance standards in the CCPDO, shall be submitted with construction drawings.

50. Roof Tops: A rooftop equipment and appurtenance location and screening plan and consistent with the performance standards in the CCPDO shall be prepared and submitted to the satisfaction of the City with construction drawings. Any roof-top mechanical equipment shall be grouped, enclosed, and screened from surrounding views.

51. Signage: All signs shall comply with the City Sign Regulations and the CCPDO.

52. Lighting: A lighting plan which highlights the architectural qualities of the proposed development and also enhances the lighting of the public ROW shall be submitted with construction drawings. All lighting shall be designed to avoid illumination of, or glare to, adjoining properties, including those across any street.

53. Noise Control: All mechanical equipment, including but not limited to, air conditioning, heating and exhaust systems, shall comply with the City Noise Ordinance and California Noise Insulation Standards as set forth in Title 24. The Owner/Permittee shall provide evidence of compliance with construction drawings.

54. Street Address: Building address numbers shall be provided that are visible and legible from the ROW.

55. On-Site Improvements: All on-site improvements shall be designed as part of an integral site development. An on-site improvement plan shall be submitted to the satisfaction of the City with construction drawings.



56. Off-Site Improvements: Public improvements shall be installed in accordance with the Centre City Streetscape Manual (CCSM). The Manual is currently being updated and the Owner/Permittee shall install the appropriate improvements according to the latest requirements at the time of Building Permit issuance.
57. Street Trees: Street trees shall be Chinese Flame on G Street, Chinese Evergreen Elm on Ninth Avenue, and Jacaranda on Tenth Avenue, per the CCSM. All trees shall be planted at a minimum 36-inch box size with tree grates provided as specified in the CCSM and shall meet the requirements of Title 24. Tree spacing shall be accommodated after street lights have been sited, and generally spaced 20 to 25 feet on center. All landscaping shall be irrigated with private water service from the subject development. Associated tree grates shall be Gateway on G Street and Tenth Avenue and CCDC Standard on Ninth Avenue, per the CCSM.
58. Street Lights: Street lights shall be Gateway on G Street and Tenth Avenue and Standard on Ninth Avenue, per the CCSM. All existing lights shall be evaluated to determine if they meet current City requirements and shall be modified or replaced if necessary.
59. Sidewalk Paving: Paving shall be Gateway on G Street and Tenth Avenue and CCDC Standard on Ninth Avenue, per the CCSM. Any specialized paving materials shall be approved through the execution of an EMRA with the City.
60. Litter Containers: The development shall include trash receptacles, one at each intersection.
61. Landscaping: All required landscaping shall be maintained in a disease, weed, and litter free condition at all times. If any required landscaping (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent in size per the approved documents and to the satisfaction of the City within 30 days of damage or Certificate of Occupancy, whichever occurs first.
62. Planters: Planters shall be permitted to encroach into the ROW a maximum of two feet. The planter encroachment shall be measured from the property line to the face of the curb/wall surrounding the planter. A minimum five-foot clear path shall be maintained between the face of the planter and the edge of any tree grate or other obstruction in the ROW.
63. On-Street Parking: Owner/Permittee shall maximize the on-street parking, wherever feasible.
64. Franchise Public Utilities: The Owner/Permittee shall be responsible for the installation or relocation of franchise utility connections including, but not limited to, gas, electric, telephone and cable, to the development and all extensions of those utilities in public streets. Existing franchised utilities located above grade serving the property and in the sidewalk ROW shall be removed and incorporated into the adjoining development. All franchise utilities shall be installed as identified in the Basic Concept Drawings. Any above grade devices shall be screened from view from the ROW.
65. Construction Fence: Owner/Permittee shall install a construction fence pursuant to specifications of, and a permit from, the City Engineer. The fence shall be solid plywood with wood

framing, painted a consistent color with the development's design, and shall contain a pedestrian passageway, signs, and lighting as required by the City Engineer. The fencing shall be maintained in good condition and free of graffiti at all times.

66. Development Identification Signs: Prior to commencement of construction on the site, the Owner and/or Permittee shall prepare and install, at its cost and expense, one sign on the barricade around the site which identifies the development. The sign shall be at least four feet by six feet and be visible to passing pedestrian and vehicular traffic. The signs shall at a minimum include: 1) Color rendering of the development, 2) Development name, 3) Developer, 4) Completion Date, 5) For information call \_\_\_\_\_. Additional development signs may be provided around the perimeter of the site. All signs shall be limited to a maximum of 160 sq. ft. per street frontage. Graphics may also be painted on any barricades surrounding the site. All signs and graphics shall be submitted to the City for approval prior to installation.

**POLICE DEPARTMENT REQUIREMENTS:**

67. No off-sale distilled spirits.

68. No alcoholic beverages shall be sold except between the hours of 8:00 a.m. and 10:00 p.m.

69. Malt liquor, beer, or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities totaling a minimum of 64 ounces.

70. No wine shall be sold in containers of less than 750 milliliters.

71. Loitering is prohibited.

72. No public pay phones are permitted on the premises or adjacent and under the control of the Owner/Permittee.

73. No arcade games of any type will be allowed/maintained inside the premises.

74. Video surveillance shall be recorded and available to law enforcement upon request covering the interior and public access points of the premises. Upon request of law enforcement, video surveillance shall not be deleted, voided, or destroyed. Recordings shall be maintained for a minimum of 30 days absent a request of law enforcement.

75. Litter and any unauthorized graffiti shall be removed promptly.

76. All retail employees shall be trained in State of California Alcoholic Beverage Control (ABC) regulations (LEAD), theft deterrence, and policies against the sales of alcoholic beverages to those under 21 years of age, transient, and/or intoxicated.

77. There shall be no exterior alcoholic advertising or signage of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic

beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

#### **TRANSPORTATION REQUIREMENTS**

78. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the appropriate City decision maker in accordance with the SDMC.

79. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond, the construction of the northerly driveway to a 16-foot driveway per SDG-163 and the southerly driveway to a 12-foot one-way exit only driveway along 9th Avenue consistent with City standards, satisfactory to the City Engineer. Along with the construction of the driveways, the Owner/Permittee shall install red curb at each - at the southerly driveway, 29 feet of red curb to the south, and at the northern driveway, 21 feet of red curb to the north, or an alternative length of red curb that provides adequate sight distance at the project driveways, satisfactory to the City Engineer. All improvements shall be completed and accepted by the City Engineer prior to first occupancy.

#### **PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:**

80. Prior to the issuance of any building permits, the Owner/Permittee shall finalize water and sewer capacity charges. Capacity charges, as well as service and meter size, are determined by water meter data card which is completed during the building plan review process.

81. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water and sewer service(s) outside of any driveway or drive aisle and the abandonment of any existing unused water and sewer services within the ROW adjacent to the Project site, in a manner satisfactory to the PUD Director and City Engineer.

82. The Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private backflow prevention device(s) (BFPD) on each water service (domestic, fire, and irrigation) in a manner satisfactory to the PUD Director and the City Engineer. BFPDs shall be located above ground on private property, in line with the service and immediately adjacent to the ROW.

83. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer facilities and five feet of any water facilities.



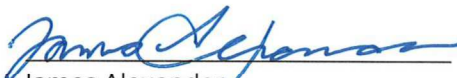
APPROVED by the Planning Commission of the City of San Diego on September 10, 2020 and  
Resolution No. 5104-PC.

Approval No. SDP 2358005, NDP 2471788, CUP 2358007

Project No. 649856

Date of Approval: September 10, 2020

AUTHENTICATED BY THE CITY OF SAN DIEGO URBAN DIVISION


  
James Alexander  
Program Manager  
Urban Division

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

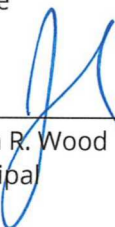
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**The undersigned Owner/Permittee**, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

**4 Lee Tenth, LLC**  
Owner

By   
Elizabeth Lee  
Manager

**Cisterra Partners, LLC**  
Permittee

By   
Jason R. Wood  
Principal

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

ATTACHMENT: Resolution No. 5104-PC

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of San Diego )On March 25, 2021 before me, Silvia Ybarra-Merrill, Notary Public,  
Date Here Insert Name and Title of the Officerpersonally appeared James Alexander  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**Title or Type of Document: 9G Project No. 649856

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**ORIGINAL**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of San Diego )  
 On 16 March 2021 before me, Linda Hrenko, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Elizabeth Lee  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Linda Hrenko  
 Signature of Notary Public

Place Notary Seal Above

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**Description of Attached Document #**

Title or Type of Document: 96 Pg b49856 Document Date: \_\_\_\_\_  
 Number of Pages: 14 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**ORIGINAL**



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of San Diego )  
 On 16 March 2021 before me, Linda Hrenko, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Jason R Wood  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Linda Hrenko  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: 95 Project 649856 Document Date: \_\_\_\_\_  
 Number of Pages: 14 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
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☐ Other: \_\_\_\_\_  
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Signer's Name: \_\_\_\_\_  
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☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**ORIGINAL**

PLANNING COMMISSION  
RESOLUTION NO. 5104-PC  
SITE DEVELOPMENT PERMIT 2358005  
NEIGHBORHOOD DEVELOPMENT PERMIT 2471788  
CONDITIONAL USE PERMIT 2358007  
**9G - PROJECT NO. 649856**

WHEREAS, 4 LEE TENTH, LLC, Owner, and CISTERRA PARTNERS, LLC, Permittee, filed an application with the City of San Diego for a permit to construct a 22-story, 253-foot tall mixed-use development comprised of 241 dwelling units (DU), 35,668 square feet (SF) of retail space, and 243 parking spaces for a project known as 9G ("Project"), (as described in and by reference to the approved plans on file at the City of San Diego and corresponding conditions of approval for the associated Permit No. 649856), on a 25,061 square-foot site;

WHEREAS, the Project site is located at 659 Ninth Avenue in the Employment/Residential Mixed-Use (ER) land use district of the Centre City Planned District Ordinance (CCPDO) and the East Village neighborhood of the Downtown Community Plan (DCP) area;

WHEREAS, the project site is legally described as Lots A, B, C, K, and L in Block 83 OF Horton's Addition in the City of San Diego, County of San Diego, State of California, according to map thereof on file in the Office of the County Recorder of San Diego County;

WHEREAS, development within the Downtown Community Planning area is covered under the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10<sup>th</sup> Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency ("Former Agency") and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115);

and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the Downtown Community Planning area is also covered under the following documents, all referred to as the "CAP FEIR": FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, adopted by the City Council on July 12, 2016 (City Council Resolution R-310595). The Downtown FEIR and CAP FEIR are both "Program EIRs" prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Downtown FEIR and the CAP FEIR reflects the independent judgement of the City of San Diego as the Lead Agency and has been reviewed and considered by the decision maker before approving the project. Consistent with best practices suggested by CEQA Guidelines Section 15168, a Downtown 15168 Consistency Evaluation ("Evaluation") has been completed for the project. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Downtown FEIR and CAP FEIR; that the project is within the scope of the development program described in the Downtown FEIR and CAP FEIR and is adequately described within both documents for the purposes of CEQA; and, that none of the conditions listed in CEQA Guidelines Section 15162 exist. Therefore, no further environmental review is required under CEQA;

WHEREAS, on September 10, 2020, the Planning Commission of the City of San Diego considered SDP/NDP/CUP No. 649856 pursuant to the Land Development Code (LDC) of the City of San Diego; and

BE IT RESOLVED by the Planning Commission of the City of San Diego, that it adopts the following findings with respect to SDP/NDP/CUP No. 649856:

**A. SITE DEVELOPMENT PERMIT [San Diego Municipal Code (SDMC) Section 126.0505]**

**1. Findings for all Site Development Permits:**



**a. The proposed development will not adversely affect the applicable land use plan.**

The applicable land use plans for this site are the DCP and the CCPDO, which is located in the Northwest sub-district of the East Village neighborhood of the DCP and the Employment/Residential Mixed-Use (ER) district of the CCPDO. The Project proposes 241 residential DU and 35,668 SF of commercial/retail space. Both multi-family residential and retail land uses are permitted in the ER District, which provides a transition between the Core District and residential neighborhoods and allows a variety of uses that includes offices, hotels, educational, and medical facilities. The Project proposes a Floor Area Ratio (FAR) of 11.14, where the Base Maximum identified in the CCPDO is 6.0 and can be increased up to 20.0 with the CCPDO FAR Bonus Programs, which the Project is utilizing by providing three-bedroom DUs for an additional 2.0 FAR, achieving LEED Silver certification for 1.0 FAR, and purchasing 1.14 FAR. With a FAR of 11.14, the Project complies with the allowable FAR established in the CCPDO. The development regulations of the CCPDO regulate the urban form of the Project. Five deviations from the development regulations are proposed by the Project, including reducing the storage requirement, increasing the tower lot coverage, increasing the tower floor plate dimension, reducing the 10<sup>th</sup> Avenue transparency requirement, and reducing a Ninth Avenue driveway width. Deviations from the SDMC are permitted with approval of a NDP pursuant to Section 126.0404 and the applicable findings therein. The NDP findings for the deviations can be found in Section B below. With approval of the NDP for the deviations, the Project is consistent with the CCPDO.

The DCP states that the Northwest sub-district should develop as the most intensive residential area in concert with its central location, transit access, and available redevelopment sites (DCP, 6.5-G-6) to contribute to an ultimate East Village population target of 46,000. The Project proposes a 241-DU residential tower with a total FAR of 11.14 on a 25,061 SF site. This is a dense project as the residential DU totals roughly 422 DU per acre on this approximately half-acre site, where over 35,000 SF of commercial space and 243 parking spaces are also provided. The mix of uses is also consistent with the DCP's goal of fostering a rich mix of uses in all neighborhoods (DCP, 3.5-G-2). The placement of the approximately 35,000 SF commercial space, anticipated to contain a large-scale, general merchandise retailer, which will become an attraction itself, is appropriate for its location due to its close proximity to Downtown attractions like the Gaslamp Quarter and Petco Park, as well as transit access at the Park & Market Trolley Station and Market Street bus stops, which is consistent with the DCP goal for the Northwest sub-district to reinforce its close proximity to Downtown destinations (DCP, 6.5-G-8).

With 241 DUs on a 25,061 SF site, the Project is providing a high-intensity land use that is consistent with a dense, urban, Downtown environment and the goals of the DCP for high overall intensities that use land efficiently in order to meet employment and population targets (DCP, 3.2-G-5), while utilizing an existing on-site historical resource. Historic Preservation is addressed in Chapter 9 of the DCP and states that locally designated resources are to be retained on-site whenever possible and that

"Partial retention, relocation or demolition of a resource shall only be permitted through applicable City procedures," that are outlined in SDMC Section 143.02 "Historical Resources Regulations." Substantial alteration of a designated historical resource means demolition, destruction, relocation, new construction, or alteration activities that would impair the significance of a historical resource. The Applicant proposes to demolish the interior of the historical resource, retain the existing historic façade, and construct a 21-story, 253-foot tall mixed-use development above it, comprised of 241 dwelling units. The interior of the historic structure on the ground floor, as well as one new basement level, will contain a combined approximately 35,668 SF of commercial retail space. Directly above the historical resource is proposed to be five parking garage levels. The redevelopment of the site cannot be determined to be consistent with the Secretary of the Interior's Standards for Historical Properties due to the loss of original materials on the historic structure, including the removal of the 1946 addition, and the massing, size, scale and proportion of the proposed tower. Therefore, the proposed redevelopment and reuse of the Resource is, by definition, a substantial alteration requiring an SDP, consistent with SDMC Section 143.0251. The Planning Commission must make all the findings in SDMC Sections 126.0505(a) and 126.0505(i) before construction can occur. Therefore, the processing of this SDP complies with and will not adversely affect the applicable land use plan.

The goals and policies of the DCP generally stipulate that historical resources should be retained on-site and integrated into the Downtown fabric in a way that contributes to the achievement of the goals for significant development and population intensification (DCP, 9.2-G-1). The proposed development will serve to add 241 DU to a currently underutilized site, providing the desired density, while at the same time, retaining and restoring a historical resource on-site, consistent with the DCP goals of protecting historical resources to communicate Downtown's heritage (DCP, 9.1-G-1). Slight modifications are proposed to the historical resource itself to accommodate the proposed development, including demolition of the 1946 addition and a portion of the façade on Tenth Avenue for a one-way driveway, the addition of doors on two frontages, and storefront infill on existing garage openings; however, overall these modifications are very limited in order to maintain as much of the historic integrity of the resource as possible. The DCP encourages the rehabilitation and reuse of historical resources (DCP, 9.1-G-2) and the incorporation of elements of historical buildings into new projects (DCP, 9.2-P-1), as is proposed with the integration and restoration of the historical façade into the Project, which will contain the 35,000 SF commercial space. With compliance with the CCPDO and advancement of the goals of the DCP, the proposed development will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The granting of the SDP and approval of the Project will not have a detrimental impact to the public health, safety, and general welfare. The Project is consistent with the plans for the East Village neighborhood as envisioned in the DCP by guiding the



Northwest quadrant's evolution as an intense residential area by utilizing its central location and making an efficient use of a site with a historical resource. The Project will adaptively reuse the currently underutilized historical resource with an active commercial land use that, along with the addition of new residents, will contribute to the neighborhood's vitality. Therefore, because the Project will improve the existing condition of the site and neighborhood by advancing the vision of the DCP, the proposed development will not be detrimental to the public health, safety, and welfare.

**c. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

The requested historical resource deviation will allow for the substantial alteration of a designated historical resource, the Pacific Telephone and Telegraph Company Garage (HRB Site No. 1355) by constructing 21 levels above it. The DCP encourages both the retention and reuse of historical resources on-site, as well as the maximization of intensities in the Downtown area. Per the CCPDO, the Base Maximum FAR of the site is 6.0, which the Project is exceeding through the use of CCPDO FAR Bonus programs, while at the same time retaining and restoring the historical resource. With approval of the SDP to allow the new construction above the historical resource and other modifications, including demolition of the 1946 addition, including the SDP Supplemental Findings included in Section 2 below, as well as a NDP for deviations from the development regulations of the CCPDO (the findings for which are included in Section B of this resolution), the proposed development will comply with all regulations of the LDC.

**2. Supplemental Findings – Historical Resources deviation for Substantial Alteration of a Designated Historical Resource or Within a Historical District:**

**a. There are no feasible measures, including a less environmentally damaging alternative, that can further minimize the potential adverse effects on the designated historical resource or historical district.**

The historical resource was designated because it was deemed to be a special element of the City's economic development as an example of America's emerging automobile industry in the first half of the 20<sup>th</sup> century. The historical resource was also designated for its retention of character defining features of the Art Deco style, including its smooth wall surfaces, flat roof, vertical projections above the roofline, fluted pilasters, geometric detailing, and metal windows.

The proposed Project (Base Project) retains the existing façade of the historical resource, adds a basement level below and 21 levels above the historical resource, including five levels of parking, with no setback from the existing facade. Modifications to the existing façade that cannot be determined to be consistent with the Secretary of the Interior's Standards for Treatment of Historic Properties include removal of the existing roof, the slab on grade, the 1946 addition, and a portion of the façade on Tenth Avenue for a driveway. In addition, doors will be added on two



facades and storefront infill will be added at existing garage openings. The construction of the 21 levels above the historical resource also cannot be determined to be consistent with the Secretary of Interior's Standards due to the proposed massing, size, scale and proportion of the tower.

The Applicant retained the London Moeder Advisors (LMA) to conduct an economic analysis to evaluate five alternatives for potential feasible measures to lessen the impact of the Project on the historical resource. The most important variables studied in the alternatives analysis were 1) the amount of setback of the tower from the façade of the historical resource and 2) height because these components comprise the primary adverse impacts to the historical resource. All alternatives retained either the whole historical resource or its original facades. The following five alternatives were evaluated for their respective Internal Rate of Return (IRR) and Yield of Cost (YOC) versus that of the Base Project, which is summarized in the table below:

Alternative	Historic Structure	Additions	Setbacks from Existing Facade	Dwelling Units	Retail Square Footage	Parking Spaces
<b>Base Project</b>	<b>Retain existing facade</b>	<b>1 basement level, 5 parking levels, 16 residential levels</b>	<b>None</b>	<b>241</b>	<b>34,000</b>	<b>276</b>
1	Rehabilitate existing structure	None	N/A	0	22,000	0
2	Retain existing facade	1 basement level, 1 parking level (open air)	N/A	0	34,000	34
3	Retain existing facade	1 basement level, 5 parking levels, 10 residential levels	15' on each street	155	34,000	189
3B	Retain existing facade	1 basement level, 5 parking levels, 16 residential levels	15' on each street	227	34,000	189
4	Retain existing facade	5 subterranean parking levels, 1 extra retail level, 11 residential levels	5' on level above existing façade, 15' for tower	168	34,000	202

The LMA analysis concluded that the three alternatives that exhibit tower setbacks above the historical resource, and thus had less impact on the historical resource, are not economically feasible due to their failure to meet the minimum IRR and YOC needed to achieve project financing (see Finding c below). The LMA analysis concluded that the Base Project, which provides no setbacks for the 21-story tower above the historical resource, was the option that best balanced economic feasibility with preservation of the historical resource. Therefore, there are no feasible measures, including a less environmentally damaging alternative, other than the Base Project that can further minimize the potential adverse effects on the designated historical resource or historical district.

**b. The deviation is the minimum necessary to afford relief and accommodate the development and all feasible measures to mitigate for the loss of any portion of the historical resource have been provided by the applicant.**

While the addition of 21 stories of new construction containing 241 DU and 243 parking spaces immediately above the historical resource will result in substantial alterations to the historical resource, the proposed Project will take steps to mitigate this impact. Historical resource mitigation measures have been developed and adopted within the Downtown Final Environmental Impact Report (Downtown FEIR), with which the Project has been evaluated against and deemed consistent. The Mitigation Monitoring and Reporting Program (MMRP) for the Downtown FEIR requires the implementation of a documentation program submitted to City Historic Resources Division staff for review and approval, a pre-construction meeting, implementation of the Treatment Plan and monitoring to ensure appropriate execution of the plan. Additionally, the historical resource was documented through the measured drawings and photography consistent with the Historical American Building Survey (HABS). A copy of this documentation will be archived with the City and other depositories as outlined in the MMRP.

The proposed Project rehabilitates the existing façade and minimizes the need for modifications to the historic façade, utilizing existing openings and maintaining the character-defining architectural features called out in the designation, with the exception of the removal of the 1946 addition along Ninth Avenue and the alteration to the 1932 façade on 10<sup>th</sup> Avenue for the driveway. These modifications are a result of the need for vehicular access for the site and the constraints of the presence of the original 1932 structure and lot size, limiting the available locations for driveways. Each driveway is one-way and the ingress driveway on Tenth Avenue is the minimum width allowed per City standards. The Project proposes a deviation for the on-way egress driveway on Ninth Avenue of 12 feet from the City standard of 14 feet, as described in subsequent sections below.

The construction of the 21 levels above the historical resource contributes to the loss of historic context; however, the economic analysis concluded that the Base Project was the only economically feasible alternative. In the Base Project, while no setbacks are provided between the existing façade and the new construction above, the

design of the new building incorporates a horizontal distinction between the historic façade and new construction through the use of materials and color. The first 4'-10" to 7'-11" (depending on height of parapet) of new wall above the historical resource is behind the face of the existing façade (one foot) and is comprised of dark gray metal panels intended to create negative space to help the historical resource appear as an independent component that is separate from the new construction above comprised of angled metal panels and spandrel glazing. The lack of setbacks allows for the maximization of buildable floor area on the lot, which allows for the number of DU and parking spaces to make the Project economically feasible project, as demonstrated in the LMA analysis, while at the same time retaining the historical resource on-site consistent with the DCP Goals and Policies. Therefore, the Project is designed with the minimum necessary deviation to afford relief to and accommodate the project and reasonable, feasible measures to mitigate the impact to the historical resource are proposed.

- c. **The denial of the proposed development would result in economic hardship to the owner. For purposes of this finding, "economic hardship" means there is no reasonable beneficial use of the property and it is not feasible to derive a reasonable economic return from the property.**

The LMA analysis used the IRR and YOC as measures to determine the economic feasibility of each alternative. As stated in the report, the typical IRR for rental housing project ranges from 13-15%; anything less would struggle to attract investors and achieve project financing. The YOC spread over existing cap rates is required to be 1.5% for redevelopment; therefore, if cap rates are approximately 4% for residential projects and 6% for retail projects, the targeted YOC is 5.5% and 7.5%, respectively, for a project to be economically feasible and to qualify for project financing. The table below summarizes the conclusions of the LMA analysis for each alternative:

Alternative	IRR Min: 13-15%	YOC Max: 5.5-7.5%
<b>Base</b>	<b>16.5%</b>	<b>5.6%</b>
1	9.2%	3.9%
2	-4.2%	3.4%
3	7.2%	4.7%
3B	10.2%	4.7%
4	-6%	3.9%

The LMA Analysis concluded that, in order to retain the historical resource, only the Base Project is economically feasible, as the five alternatives fail to meet the minimum IRRs and YOCs to successfully attract investors and achieve project financing. Therefore, denial of the Project would result in economic hardship to the owner because there is no reasonable beneficial use of the property that does not require complete redevelopment in order to derive a reasonable economic return from the property.



**B. NEIGHBORHOOD DEVELOPMENT PERMIT [SDMC Section 126.0404]**

**1. Findings for all Neighborhood Development Permits:**

**a. The proposed development will not adversely affect the applicable land use plan.**

The proposed Project is consistent with the objectives of the DCP, CCPDO, and the Downtown Design Guidelines (DDG). The Project advances the goals and policies of the DCP by contributing to the orderly growth of the East Village neighborhood with the construction of a mixed-use development with both residential and commercial uses, which adds to the balance of uses in Downtown and advances the goal of the making the Northwest sub-district of the East Village neighborhood the most intense residential area (DCP, 6.5-G-6). Specifically, the Project is adding 241 residential DU and approximately 35,668 SF of commercial space, providing a neighborhood amenity for surrounding residents and taking advantage of the site's central location near transit and other Downtown attractions, per the DCP (DCP, 6.5-G-6 and 6.5-G-8). With the 25,061 SF lot size and the high-intensity of the site with 241 DU, 35,000 SF of commercial space, 243 parking spaces, and a historical resource, the Project provides the desired diversity and mix of uses, while also contributing to high overall intensities in Downtown and using land efficiently to advance the population and employment targets of the DCP (DCP, 3.2-G-5).

The Project is designed at a scale that is similar to other existing buildings in the nearby vicinity, such as the 23-story Strata and 33-story The Mark to the south, and the newly constructed 34-story The Merian one block to the east. In the CCPDO, residential and commercial/retail uses are permitted land uses in the ER land use district. Per the DDG, the Project utilizes architectural articulations, provides street level activation, and uses high-quality materials. The building's massing is modulated through the use of glazing, concrete framing elements, rooftop off-set planes, and varying materials around the Project, which provide visual interest and architectural variation. At the street-level, the existing historic Pacific Telephone and Telegraph Company Garage (HRB Site No. 1355) is being retained, restored, and reused on the ground floor with a commercial/retail use that will serve as a neighborhood amenity and an active use that engages pedestrians. Standing in contrast to the historic façade at the ground floor, the tower of the Project makes use of a variety of high-quality materials to help break up the massing.

Five deviations from the development regulations are proposed by the Project, including reducing the storage requirement, increasing the tower lot coverage, increasing the tower floor plate dimension, reducing the 10<sup>th</sup> Avenue transparency requirement, and reducing a Ninth Avenue driveway width. As an in-fill/sustainable project in a mixed-use zone (See Finding B.2 below), deviations from the SDMC are permitted with approval a NDP pursuant to Section 126.0402(p). With approval of the NDP, the Project is consistent with the CCPDO. As a consolidated Project per Section 112.0103, the Planning Commission must make all the Findings in SDMC Sections 126.0404(a) and 126.0404(f) before construction can occur. Therefore, the processing of this NDP complies with and will not adversely affect the applicable land use plan.

Because the Project provides design solutions that are consistent with the DDGs and compatible with the neighborhood, advances the goals of the DCP, and provides a land use that is compatible with the CCPDO, the proposed development will not adversely affect any applicable land use plans.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The granting of the deviations and the approval of the Project will not have a detrimental impact to the public health, safety, and general welfare. The Project is consistent with the plans for the East Village neighborhood as envisioned in the DCP by advancing the development of the Northwest sub-district of the East Village neighborhood as the most intensive residential area and will contribute to its vitality by adding 241 residential units to the neighborhood and providing an attractive and engaging streetscape that includes ground level commercial lease space in a historical resource that adds character to the neighborhood. Because the components of this Project increase activity in the neighborhood, improve the aesthetics of the site, and advance the vision of the DCP, the proposed development will not be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.**

With approval of the five requested deviations, the proposed development complies with all applicable regulations of the LDC, including the CCPDO and other applicable sections of the SDMC. The requested deviations serve to maximize the density and use of the site, which is constrained by the presence of the existing historical resource being retained and restored on-site and the lot size. For example, the reduction of the personal storage requirement and increase in tower lot coverage and tower floor plate serve to increase the buildable area and therefore allow for the highest and best use of the site by providing more housing units than would otherwise be feasible on the site. The maximization of the property with the provision of housing opportunities advances the population goals of the DCP. With the allowed deviations, the Project complies with the LDC and CCPDO.

**2. Supplemental Findings – Affordable Housing, In-Fill Projects, or Sustainable Buildings Deviation**

**a. The development will materially assist in accomplishing the goal of providing affordable housing, in-fill projects, or sustainable building opportunities.**

The Project is an in-fill project because it proposes the construction of a mixed-use development within a Transit Priority Area, per SDMC Section 143.0915(b). The Project is a high-intensity development, maximizing the use of the 25,061 SF lot to provide 241 residential DU and approximately 35,000 SF of commercial/retail space while at the same time retaining a historical resource on a 25,061 SF site.



Additionally, the Project proposes LEED Silver certification to obtain a 1.0 FAR Bonus. The CCPDO allows for a 1.0 FAR Bonus for either LEED Silver certification or California Green Building Standards Code (CALGreen) Tier 2 performance. SDMC Section 143.0915(c) identifies a project that incorporates the voluntary Tier 2 measures of CALGreen as a sustainable building. As an equivalent threshold to earn a 1.0 FAR Bonus, the Project is proposing LEED Silver certification and is therefore a sustainable building, consistent with SDMC Section 143.0915(c).

**b. Any proposed deviations are appropriate for the proposed location.**

The requested deviations to the CCPDO development regulations will allow for (1) a reduction of the required personal storage requirement from 100% of DU (241 DU) to 38% of DU (91 DU), (2) a reduction of the minimum width required for the on-way driveway on Ninth Avenue from 14 feet to 12 feet, (3) an increase of the allowable maximum tower lot coverage from 50% to 60% of the lot, (4) an increase of the allowable maximum east-west tower floor plate dimension from 130 feet to 150 feet, and (5) a reduction in the minimum required ground level transparency of the Tenth Avenue building façade from 60% to 40% to accommodate the existing historical resource. The site is constrained by the retention of the existing historical resource on-site and relatively small lot size in the context of achieving the desired density in a financially feasible residential development. With these constraints, buildable space is limited so three deviations are requested to allow for the highest use of the site to maximize the FAR and number of units in the Project to advance the population goals of the DCP by providing as many residential units as feasible in the Project. The remaining two deviations are requested to accommodate the retention of the existing historical resource on-site and minimize modifications to advance the historic preservation goals of the DCP by protecting, incorporating, and reusing historical resources in projects.

The deviations that serve to increase the number of DUs in the Project and maximize the use of the site not only advance the goals of the DCP by advancing population and housing targets and contributing to the evolution of the Northwest sub-district of the East Village neighborhood into the highest-intensity residential area, but are also deemed necessary by the Applicant to make the Project financially feasible and secure the appropriate project financing. Cost is also a limiting factor for the Applicant that prevents the Project height from exceeding 240 feet, so as to not trigger a more costly construction type. As is common in high-rise towers, a dual-frame structural system is required above 240 feet to strengthen the performance of the building. The Applicant estimates that exceeding 240 feet in the Project would add approximately \$4.5 million to the Project. So the deviations not only provide housing that advances the DCP goals, but also provide financial feasibility for the Project by reducing costs, while maximizing buildable area.

The reduction of the personal storage requirement has a significant impact. The CCPDO requires personal storage units that are at least 240 cubic feet in size for each DU, which in this case is 241 DU. If the footprint of each personal storage unit is approximately 38.6 SF (estimated 6.22-foot height, length, and width), 241 personal



storage units would equal over 9,000 SF of space, which, after accounting for circulation, core, access, etc., would likely use a full floor (typical tower square footage in the Project is 16,473 SF). A typical residential floor contains 16 DU, so it is reasonable to conclude the number of DU would be decreased if the full personal storage requirement was implemented.

The increase in the maximum tower lot coverage and tower floor plate dimensions maximizes the buildable area of the site in order to provide more DU. The tower lot coverage deviation increases the allowable coverage from 50% of the site to 66%, resulting in an extra 4,000 SF of buildable area per level. The tower floor plate dimension deviation increases the east-west tower dimension from 130 feet to 150 feet. The Applicant estimates that full compliance with the lot coverage and tower dimensions would require six additional stories to retain the same number of DU and add approximately \$8,000,000 to the Project costs, making the project financially infeasible. A massing study was produced that analyzed the impacts of these deviations on potential future development surrounding the site in the context of the development regulations of the CCPDO. The massing study provided two scenarios for the development of the remaining southern portion of the subject block: 1) one tower development on the entire southern portion of the block, and 2) the southern portion of the block divided into two with two independent tower developments. The increase in tower width is not substantial, given that the CCPDO allows 200-foot wide towers in a north/south direction similar to the recently constructed Merian project two blocks to the east. The massing studies demonstrate that adjacent properties could fully develop under the CCPDO development regulations, although the overall block coverage would exceed the desired maximum lot coverage of 50%.

The Project makes efforts to address the increased mass of the building caused by the increased tower lot coverage and floor plate dimension deviations by adhering to the DDG on building tower design. The tower is designed with a majority of the facades composed of glazing (DDG, 4.5.4.F) and incorporates balconies and architectural projections to provide desirable elevation and composition variety (DDG, 4.5.4.E). Overall, the tower expresses variety, avoids monotony, and distinguishes different building volumes (DDG, 4.4.1.C) by employing multiple glazing colors, different materials, and concrete framing components that span the height of the tower. Considering the minimal impact of the massing on neighboring properties, the enhanced design, and the advancement of the population and goals of the DCP, these deviations are appropriate for the proposed location.

The remaining two deviations regarding the driveway width and transparency requirement are related to the retention of the existing historical resource on-site. While the preceding deviations advance the population and intensity goals of the DCP, these deviations advance the historic preservation goals of the DCP to protect historical resources (9.1-G-1), rehabilitate and reuse them (9.1-G-2), and incorporate them into new projects (9.2-P-1), all while achieving policies for significant development and population intensification (9.2-G-1).

The Project is requesting a deviation from SDMC Section 142.0560(j) for a new one-way driveway for vehicles to egress from the site onto Ninth Avenue. The minimum standard driveway curb-cut width for a one-way non-residential curb cut and driveway is 14 feet wide and the Project is proposing a 12-foot driveway curb cut. The proposed driveway width is the result of the limited frontage available on Ninth Avenue without requiring modifications to the original 1932 façade of the historical resource. As proposed, both the loading bay driveway and adjacent exit-only driveway for parking garage on Ninth Avenue do not impact the façade of the historical structure. The Project parking circulation was designed with a driveway entrance on Tenth Avenue and a separate exit driveway on Ninth Avenue to limit modifications to the historic façade. In addition, the proposed 12-foot wide driveway curb cut design would maintain the driveway apron flare within the Project boundary with adequate separation between the curb cut opening and adjacent property line. The Project also provides visibility areas at the Project driveway per SDMC Diagram 113-02SS and proposes convex mirrors located within the site to enhance the visibility of pedestrians, cyclists, and other vehicles. A sight distance analysis was performed that confirmed adequate lines of sight for vehicles, bicycles, and pedestrians on Ninth Avenue. The reduced driveway width also serves to minimize breaks in the right-of-way for vehicles, which improves the pedestrian and streetscape environment in Downtown consistent with the Section 3.2.1 and 4.5.11 of the DDG and Section 5.4 of the DCP. Therefore, this deviation is appropriate for the proposed location.

The deviation to reduce the transparency requirement is a result of preserving as much of the original character and architecture of the existing historical structure. The transparency requirement of the CCPDO requires at least 60% of each building façade between three and 12 feet above the sidewalk to be transparent and allow views of the indoor spaces to create active storefronts and an engaging pedestrian experience. The historical resource, while a defining characteristic of the Project, is also a site constraint, limiting the design in many ways, including the placement of utility services. With the existing condition of the Tenth Avenue façade of the historical resource, originally constructed as a commercial warehouse and the goal of preserving as much of the historical resource façade as possible, after the placement of the driveways, utility services, and commercial space-serving stair and elevator, the resulting transparency is approximately 40% of the façade. Given the importance of retaining and restoring the historical resource on-site the efforts to design around it, the impact of the reduced façade transparency on one frontage on the overall Project is minimal and therefore appropriate for the proposed location.

**C. CONDITIONAL USE PERMIT [SDMC Section 126.0305]**

**1. Findings for all Conditional Use Permits:**

- a. The proposed development will not adversely affect the applicable land use plan.**



The Project is located in the ER land use district of the CCPDO. Per the CCPDO, establishments with off-site alcoholic beverages sales are permitted within the ER district with approval of a CUP. The proposed commercial/retail space is located on the ground and basement levels of the Project and will be a supplementary component of a large-scale general merchandise retailer. The proposed use will not adversely affect the applicable land use plan, as it adheres to the CCPDO, is in a land use district that accommodates a diverse array of uses, including commercial/retail businesses, and is consistent with the DCP goal of providing for an overall balance of uses and a full compendium of amenities and services (3.1-G-2). Therefore, the proposed development will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.**

The proposed off-site alcohol sales will not be detrimental to the public health, safety and welfare of the community as proposed and when operated with the recommended conditions of approval. The off-site sales of alcoholic beverages will be a relatively small component of a large-scale general merchandise retailer. The display area and footprint of the space will be minimal when compared to the overall store and therefore pose negligible detrimental effects. Additionally, conditions are proposed by the San Diego Police Department (SDPD) that aim to address potential adverse impacts of the use on the health, safety, and welfare of the neighborhood. These conditions prohibit loitering, litter, and graffiti, and requires video surveillance and employee training to prevent theft and sales of alcohol to minors. When in operating in compliance with the SDPD's recommended conditions of approval, the proposed development will not be detrimental to the public health, safety, and welfare.

**c. The proposed development will comply with the regulations of the LDC including any allowable deviations pursuant to the LDC.**

The Project will comply with the regulations of the SDMC for the off-site sale of alcoholic beverages in the proposed ground and basement level commercial/retail establishment. The proposed use will be required to comply with all applicable regulations of the CCPDO and conditions of the approved permit. Further, the proposed use will be required to obtain all necessary governmental approvals and comply with the applicable requirements of the State Department of Alcoholic Beverage Control and the SDPD.

**d. The proposed use is appropriate at the proposed location.**

The Project is located in the ER land use district and is within the East Village neighborhood of Downtown. A variety of uses are permitted in the ER land use district, including office, residential, hotel, research and development, educational, and medical facilities. The large-scale general merchandise retailer is appropriate at the proposed location along G Street, where it is in close proximity to several high-rise residential developments. The Northwest sub-district of the East Village neighborhood



is envisioned in the DCP to become the highest-intensity residential area, so a general merchandise store with a variety of products, including alcoholic beverages, will serve as a neighborhood amenity for residents, as well as an attraction to visitors in nearby Gaslamp Quarter and ballpark stadium. Therefore, the proposed use is appropriate at the proposed location.

**2. Supplemental Findings – Exceptions to 156.0315(b)(1)(C) for Hours of Off-Site Alcoholic Beverage Sales**

**a. The request for an exception was provided in the public notice for the hearing.**

The Notice of Public Hearing for the Project was published on August 6, 2020 and included the following statement: "The CUP request includes an exception to extend the standard off-site alcoholic beverage sales from between 10:00 a.m. and 10:00 p.m. to between 8:00 a.m. and 12:00 a.m." Therefore, the original exception request was provided in the public notice for the hearing.

**b. The proposed use and operations are compatible with existing and planned surrounding land uses.**

The proposed use is off-site alcoholic beverage sales from 8:00 a.m. to 10:00 p.m. as an accessory use within a large-scale general merchandise retailer on the ground floor and basement of a 22-story mixed-use tower. The DCP encourages a rich mix of uses in all neighborhoods (DCP, 3.5-G-2) and an overall balance of uses in Downtown (DCP, 3.1-G-2). With this vision, Downtown has become a vibrant community with a variety of uses that are active throughout the day and night. The blocks surrounding the Project site include a mix of uses such as a gym, restaurants, bars, and residences. The DCP anticipates this neighborhood will continue to redevelop with high-intensity residential and commercial developments (DCP, 6.5-G-6). There are similar large-scale grocery stores in Downtown that also provide accessory off-site alcoholic beverage sales with extended hours with approved CUPs. Albertson's, located four blocks to the east, and Jimbo's, eight blocks to the west within Horton Plaza, have operated with extended off-site alcoholic beverage sales hours since 2006 and 2012, respectively, without becoming nuisances to the neighborhood. With this variety of existing uses, including similar uses and many residences, a general merchandise retailer with accessory off-site alcoholic beverage sales from 8:00 a.m. to 10:00 p.m. provides a service to the neighborhood and therefore is compatible with existing and planned surrounding land uses

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, SDP/NDP/CUP No. 649856 is hereby GRANTED by the Planning Commission to the

referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 649856, a copy of which is attached hereto and made a part hereof.



James Alexander  
Program Manager  
Urban Division

Adopted on: September 10, 2020

IO#: 24008439

Attachments: SDP/NDP/CUP No. 649856